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10/820,832	04/07/2004	Sean Christopher Endler	86604/7114	8497
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BERMAN, BRIAN J				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/820,832

Applicant(s)

ENDLER ET AL.

Examiner

BRIAN BERMAN

Art Unit

3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This Office Action is in response to the amendment filed on December 1, 2008. The Amendment amended claims 1, 16-21, and 23-29. The Amendment cancelled claim 6. Claims 1-5 and 7-29 are still currently pending and have been considered below.

Examiner's Note: The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by Examiner.

2. Possible Allowable Subject Matter

Claim 17 states "receiving a location parameter from one of the plurality of devices for a scheduled meeting among participants individually associated with one of the plurality of devices". The current claim language "a scheduled meeting" is not functional in claim 17. Two people (strangers that do not even know each other) at the same professional sports game, who both have cell phones reads on this claim language.

Applicant needs to adopt language that makes "a scheduled meeting" functional to have a patentable distinction. The background states that the portable electronic device can be used to store the meeting time and location on the user's calendar. The scheduled meeting might be limited to a jointly scheduled meeting using the portable electronic device's calendar. This would make the scheduled meeting functional. It is not clear to Examiner if Applicant discloses in the specification (to avoid a new matter rejection) that this stored time and location in the calendar is

later used to send targeted promotions (based on time and location). However, if Applicant is legally able to amend the claim language as recommended, this would overcome the prior art and rejection of record. A further search would be required by Examiner to determine if there is possible allowable subject matter.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(e) the invention was described in – (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language

3. Claims 1-16 and 23-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Jokinen et al. (hereinafter Jokinen), US Patent 7,343,317 B2.

Concerning Claim 1, Jokinen discloses the invention as claimed, including:

A method comprising:

detecting a device capable of receiving and transmitting an electronic message; (Summary of Invention, abstract, col 14, lines 6-25; col 5, lines 18-30)
searching for a plurality of promotions stored in a storage module; (col 6, lines 50-54)

receiving a signal from the detected device and detecting a device profile in the signal corresponding to the device (col 5, lines 18-22, a cell phone system must inherently send and receive its identification in order to be contacted. Therefore, this information is taught in the signal) wherein the device profile contains a preference for a product or a service (col 5, lines 53-61) and a geographical boundary; and (col 5, lines 33-38)
selecting a particular promotion from the plurality of promotions based on the preference for the product or the service (col 5, lines 53-61, col 5, lines 41-55, col 6, lines 3-6, col 6, lines 51-55) and the geographical boundary associated with the device profile. (col 5, lines 33-38)

As to Claim 2, Jokinen further discloses

The method according to claim 1 further comprising detecting the location of the device using the global positioning system. (col 5, lines 22-38; abstract)

As to Claim 3, Jokinen further discloses

The method according to claim 2 wherein the geographical boundary is relative to the current location of the device. (col 5, lines 22-38)

As to Claim 4, Jokinen further discloses

The method according to claim 1 wherein in the step of selecting a particular promotion, the particular promotion is selected based on the valid hours of availability. (col 7, lines 40-48, col 8, lines 16-25)

As to Claim 5, Jokinen further discloses

The method according to claim 1 wherein in the step of searching for a plurality of promotions, each of the plurality of promotions includes an electronic coupon. (col 6, lines 3-6)

As to Claim 6, Jokinen further discloses

The method according to claim 1 wherein the device profile is received in a signal sent from the device. (abstract)

As to Claim 7, Jokinen further discloses

The method according to claim 1 further comprising detecting a promotion profile for each of the plurality of promotions. (col 8, lines 16-20)

As to Claim 8, Jokinen further discloses

The method according to claim 7 wherein the promotion profile for each of the plurality of promotions includes location information. (col 5, lines 33-38, col 7, lines 40-48)

As to Claim 9, Jokinen further discloses

The method according to claim 7 wherein the promotion profile for each of the plurality of promotions includes a description of offerings. (col 6, line 19)

As to Claim 10, Jokinen further discloses

The method according to claim 7 wherein the promotion profile includes days and time of validity for each of the plurality of promotions. (col 8, lines 16-31, col 11, lines 1-26)

As to Claim 11, Jokinen further discloses

The method according to claim 7 wherein selecting the particular promotion is based on the promotion profile for each of the plurality of promotions. (col 8, lines 47-51)

As to Claim 12, Jokinen further discloses

The method according to claim 1 further comprising displaying the particular promotion on the device. (abstract)

As to Claim 13, Jokinen further discloses

The method according to claim 1 wherein the particular promotion displayed on the device

includes a location field (col 13, lines 30-32, col 13, lines 42-54) a type of product or service field, (col 13, lines 27-28) an hours of availability field (Fig. 5, place order before 8 P.M., expiration time, col 12, lines 46-52, col 7, lines 40-49) and contact information field. (col 13, lines 25-28, Fig. 10, B-Burger, the name of the store on the electronic coupon is read as contact information)

Concerning Claim 14, Jokinen further discloses

The method according to claim 1 wherein the device is associated with a particular user (col 9, lines 45-49) and has attributes that include a device attribute, (col 4, lines 48-60, col 7, lines 4-30) a user identity attribute, (col 5, lines 53-61) a geographic boundary attribute (col 5, lines 33-38) and a product or service attribute. (col 5, lines 53-61)

Concerning Claim 15, Jokinen further discloses

The method according to claim 1 wherein the device is associated with multiple users (col 9, lines 20-41) and has attributes that include a device attribute, (col 4, lines 48-60, col 7, lines 4-30) a plurality of user identity attributes, (col 5, lines 53-61) a geographic boundary attribute (col 5, lines 33-38) and a product or service attribute. (col 5, lines 53-61)

As to Claim 16, Jokinen discloses the system for implementing the method of claim 1. (see discussion of claim 1)

As to Claim 23, Jokinen discloses the invention as claimed, including:

A system, comprising:

detecting a device associated with a user; (col 14, lines 6-25; col 5, lines 18-30)

storing a device record containing user information associated with the user and a promotion record containing promotion information associated with a promotion; and (col 5, lines 39-43; col 6, lines 18-20)

selecting a particular promotion based on the user information that includes a preference for a product or a service (col 5, lines 53-61, col 5, lines 41-55, col 6, lines 3-6, col 6, lines 51-55) and a geographical boundary associated with the device, (col 5, lines 33-38) and the promotion information. (col 8, lines 48-51, claim 11)

As to Claim 24, Jokinen further discloses

The computer-readable medium according to claim 23 wherein the geographical boundary is relative to the current location of the device. (col 5, lines 22-38)

As to Claim 25, Jokinen further discloses

The system according to claim 23 wherein the current location of the device is determined using a global positioning system. (col 5, lines 22-38; abstract)

As to Claim 26, Jokinen further discloses

The system according to claim 23 wherein the particular promotion selected by the promotion

selection module includes an electronic coupon. (abstract, col 6, lines 3-6)

As to Claim 27, Jokinen further discloses

The system according to claim 23 wherein the promotion information includes a time and data validity. (col 8, lines 16-31, col 11, lines 1-26)

As to Claim 28, Jokinen further discloses

The system according to claim 23 wherein the promotion information includes location information. (col 5, lines 33-38, col 7, lines 40-48)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Note:

The background (paragraphs 2 and 3 of the specification) states that “the portable electronic device is used to set up a meeting between another person by **communicating via voice**

signals.” Therefore, when two people talk on their cell phones, and they agree to meet at a movie at 3:00 PM tomorrow (at a certain time, date, and location), this qualifies as a scheduled meeting.

Note on interpretation of claim terms - Unless a term is given a “clear definition” in the specification (MPEP § 2111.01), the examiner is obligated to give claims their broadest reasonable interpretation, in light of the specification, and consistent with the interpretation that those skilled in the art would reach (MPEP § 2111). An inventor may define specific terms used to describe invention, but must do so “with reasonable clarity, deliberateness, and precision” (MPEP § 2111.01.III). A “clear definition” must establish the metes and bounds of the terms. A clear definition must unambiguously establish what is and what is not included. A clear definition is indicated by a section labeled definitions, or by the use of phrases such as “by xxx we mean”, “xxx is defined as”; or “xxx includes, ... but does not include ...”. An example does not constitute a “clear definition” beyond the scope of the example.

The instant application contains no such clear definition for the phrase “scheduled meeting”. In the instant case, the examiner is required to give the term “scheduled meeting” its broadest reasonable interpretation, which the examiner judges to be “setting up or planning a meeting at a future time and location, such as by speaking over the telephone”. That is taught as indicated by the cited prior art.

5. **Claims 17-22 and 29** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nemirofsky, US Patent Application 2004/0117255 in view of Huemoeller, US Patent 5,855,006.

As to Claim 17, Nemirofsky discloses the invention substantially as claimed, including:

A method comprising:

detecting a plurality of devices capable of receiving and transmitting an electronic message;

(abstract, paragraph 53)

receiving a location parameter from one of the plurality of devices for a scheduled meeting among participants individually associated with one of the plurality of devices; (paragraph 53, movie theater, the meeting could be a specific movie at a specific time, which is read as scheduled meeting)

searching for a plurality of promotions stored in a storage module; and (paragraphs 56, 57, electronic coupon, the message may be transmitted as an SMS message to the user's cell phone, including a UPC bar code)

selecting a particular promotion (the offer) from the plurality of promotions (e-coupons) based on the location parameter. (paragraph 53, receive message codes within immediate vicinity of a movie theater, a mall, restaurant)

Nemirofsky does not specifically disclose the scheduled meeting.

However, Huemoeller discloses a scheduled meeting (Huemoeller, abstract, col 2, lines 16-24, the personal activity scheduling system can include meetings, col 3, lines 2-14, coupons are related to the information user is accessing and can be time varying. Coupons are automatically available to user on predetermined dates).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for Nemirofsky to utilize a personal activity scheduling system for meetings. The rationale is that storing a record of future meetings will allow a person to stay organized and remember upcoming meetings. This will help prevent a person from accidentally forgetting when a meeting is to take place. This can even allow for reminder notices to be automatically sent for upcoming meetings. It would be a bad first impression to not show up at

all or show up late on a first date (due to forgetting the correct time of the date). A company will be more productive and efficient if all of the employees are on time at each of the meetings.

Nemirofsky in view of Huemoeller does not specifically disclose the scheduled meeting is between at least two people corresponding by at least two electronic devices.

However, Official Notice is taken asking out another person over the phone to go to a movie has been known as a common date activity.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of *Nemirofsky* in view of Huemoeller with the commonly recognized practice of agreeing over the phone to go to a movie with another person in order to make the movie experience more enjoyable. The rationale is that it is more fun to go to a movie (or to dinner at a restaurant) with a date, friends, or family, as opposed to going to see the movie alone. If two people are going on a date to a movie, it would be important for both people individually to remember the time and location of the movie. This would help make sure that both parties do not forget about the date. A reminder could even be sent to both parties' cell phones.

Nemirofsky in view of Huemoeller does not specifically disclose the scheduled meeting is set up and stored by at least two electronic devices.

However, Official Notice is taken that setting up a meeting through a calendar/meeting/appointment scheduling program has been known as a common work practice. For example, the Microsoft Office Outlook 2003 calendar/meeting/appointment scheduling

program is commonly used to set up meetings at work. Microsoft Office Outlook 2003 allows a person to easily send a meeting request to multiple people.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of *Nemirofsky* in view of Huemoeller with the commonly recognized practice of setting up a meeting through a calendar/meeting/appointment/scheduling program. The rationale is that a person can easily invite other people to a meeting. When people accept the meeting, then they can pull up the meeting time and location whenever they want (since that information is automatically stored in their calendar when they accept the meeting). This would help make sure that both parties do not forget about the time and location of the meeting. A meeting reminder can be sent to both parties' electronic devices. Also, it is convenient that the meeting shows up in a person's calendar. That allows other people to see when an individual is available or is already busy with another meeting. Before picking a possible meeting time, an individual can first look at another person's calendar to see when that latter person is available and when the latter person is already busy with other meetings. This saves time in finding a suitable meeting time when both parties are available to attend. Storing a record of future meetings will allow both parties to stay organized and remember upcoming meetings. This will help prevent a person from accidentally forgetting when a meeting is to take place. This can even allow for reminder notices to be automatically sent for upcoming meetings. It would reflect negatively on a person to not show up at all or show up late to a meeting. A company will be more productive and efficient if all of the employees are on time at each of the meetings.

As to Claim 18, Nemirofsky further discloses

The method according to claim 17 wherein selecting the particular promotion is based on a time of the meeting. (paragraph 53, movie theater, the movie is at a certain time and the advertisement can be based on the time of the movie)

As to Claim 19, Nemirofsky further discloses

The method according to claim 17 wherein selecting the particular promotion further comprises matching the location parameter with the particular promotion such that the particular promotion is utilized at the location. (paragraph 53, movie theater, e-coupon could be used to purchase food and beverages at movie theater, mall, restaurant, the electronic coupon could be for goods at store)

Concerning Claim 20, Nemirofsky discloses the invention substantially as claimed, according to claim 17.

Jokinen does not teach the step wherein selecting the particular promotion further comprises matching the location parameter with the particular promotion such that the particular promotion is utilized at a competing location.

However, Official Notice is taken that the use of sending advertisements to people to use at a competitor has been known as a basis for the competitor to easily target customers who are likely to purchase competitor's products or services. At a grocery store, when a person buys one

brand of beverage (Coke), the person will get coupons when checking out (comprising coupons from not only Coke, but also coupons from competitors: such as Pepsi and Dr. Pepper). Many people shop around at multiple stores before purchasing an item. When people want to buy furniture (such as office chairs, desks, beds), many people shop around at least three different stores before making a purchase. When a person is at store one, it would be great to receive coupons from competitors' stores, since the person was already going to look at multiple stores before deciding which store to make his purchases.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Nemirofsky with the commonly recognized practice of matching the location with a promotion that would be utilized at a competing location (competitor's store) as a cheap and efficient way for a competitor to advertise to the competitors' target audience, that is people who have already shown an interest in buying that kind of product (such as Coke or soda). Also, there are sponsored links when people do a Google search. These companies (sponsored links) benefit by promoting their product, which may be a competitor to the store people were looking for when they searched on the internet. The rationale would have been for a competitor to cost-effectively market to potential future customers who have already shown an interest in buying that general kind of product, so the people are more likely to buy similar items at a competitors' store (competing location).

Concerning Claim 21, Nemirofsky discloses the invention substantially as claimed, according to claim 17.

Nemirofsky does not teach the step wherein selecting the particular promotion further

comprises matching the location with the particular promotion such that the particular promotion is utilized at a location unrelated to a location associated with the scheduled meeting.

However, Official Notice is taken that the use of sending advertisements to people to use at a different location unrelated to the current location has been known as a basis for a company to advertise to new people, who may or may not be interested in companies' products. At a grocery store, when a person buys one brand of beverage (Coke), the person will get coupons when checking out (comprising coupons from not only Coke, but also coupons from products that a user has never purchased such as chips and salsa). A new company might only have one store in Washington, DC. This company will need to advertise in other states (other locations) if the company wants to sell products nationally. The company might want to advertise to all types of people, in order to sell products to anyone to grow and expand the company. For example, a company might give out advertisements (coupons) for running shoes to anyone in Los Angeles, even though the company (store) is only located in Washington, DC. Shoes are an item that everyone uses, so the fact that the promotion is at another location than the location of the store is not significant. If people like the shoes, they could simply buy the shoes over the internet. The company's location is unrelated to the location of the promotion or advertisements.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Nemirofsky with the commonly recognized practice of matching the location with a promotion that is utilized at another location unrelated to the location of the promotion as a way to try and attract new customers (who may have never even considered buying this type of product). The potential customer may have never even heard of the product. The potential customer may be more likely to buy the product, since potential

customer may not know of competitors who sell similar products. If coupons are used (promotion), people are even more likely to try out this product for the first time. Also, there are sponsored links on many websites. For example, the dating site www.True.com advertises on many different unrelated websites (trying to target as many people as possible, since anyone located anywhere might be interested in online dating). Since so many people might be interested in dating, the company sends advertisements to people, even without information that a person is interested in getting help to find a date. A company may choose to promote to other unrelated locations, different than where the company resides. A new, emerging company might not yet know who his target audience comprises. A company might want to simply build popularity of its name by getting the companies' name out to as many people as possible, as opposed to specific target groups. A company promotes their generic product (without a need of checking to see if people are first looking for help in online dating or purchasing shoes) since so many different people are looking for help to spend money on these generic items, a company may choose the most cost-effective marketing technique is simply to send advertisements at a promotion location, which is totally unrelated to the location of the store. The rationale would have been for a store to target a whole new set of potential customers, including people who may have never even heard of the products being advertised or promoted, or to promote a generic product (such as online dating or shoes) that anyone might be interested in spending money on these generic items.

As to Claim 22, Nemirofsky further discloses

The method according to claim 17 further comprising detecting a current location for each of the

plurality of devices. (paragraph 53, detects current location of the universal digital assistant using technology including infrared, Blue-tooth, IEEE 802.11, Wi-Fi, or short burst Ethernet technology)

Claim 29: Claim 29 is the computer-readable medium to perform the method claim 17, and is rejected in a like manner.

Response to Arguments

6. Applicant's arguments with respect to claims 1-16 and 23-28 filed on December 1, 2008 have been fully considered but they are not persuasive.

Examiner maintains the rejection regarding claims 1-16 and 23-28. The amendment of claim 1 would not overcome the rejection of record because a cell phone system, which is taught by the reference, must inherently send and receive its identification in order to be contacted. Therefore, this electronic information (stored in a database) is taught in the signal.

Applicant's arguments with respect to claims 17-22 and 29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Although the following references were not used in the Office Action, they were highly considered by the Examiner. Applicants are further directed to consult these references. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Patent 7,069,228 to Rose et al. teaches apparatus and method for an internet based computer reservation booking system. (col 15, lines 3-16, electronic coupon is sent the day after the dining experience to encourage a reply email giving feedback to entice the user to return to the establishment)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Berman whose telephone number is (571) 270-3603. The examiner can normally be reached on Monday through Thursday 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on (571)272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian Berman/
Examiner, Art Unit 3688
3/1/2009

/Donald L. Champagne/
Primary Examiner, Art Unit 3688